MONTANA LEGISLATIVE HISTORY

Chapter 303 19 1989

Bill H 312 S _____ Original bill & history ✓ C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) _____	___C	Hearing Date(s) _____	___C
1/31	✓C	3/8	___C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out 1/31	✓C	3/9	✓

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HOUSE BILL NO. 312

INTRODUCED BY CONNELLY, LEE, B. BROWN, BROOKE, COHEN

IN THE HOUSE

JANUARY 19, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 20, 1989	FIRST READING.
JANUARY 31, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 1, 1989	PRINTING REPORT.
FEBRUARY 2, 1989	SECOND READING, DO PASS.
FEBRUARY 3, 1989	ENGROSSING REPORT.
FEBRUARY 4, 1989	THIRD READING, PASSED. AYES, 96; NOES, 0.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 6, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 9, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 10, 1989	SECOND READING, CONCURRED IN.
MARCH 13, 1989	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 14, 1989	RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

House BILL NO. 362

INTRODUCED BY Connolly Lee Bob Brown Lindly

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE LAW RELATING TO MODIFICATION OF CHILD CUSTODY DECREES BY DEFINING "PRIOR CUSTODY DECREE" TO MEAN A JUDICIAL DETERMINATION OF CUSTODY; AND AMENDING SECTIONS 40-4-212 AND 40-4-219, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-4-212, MCA, is amended to read:

"**40-4-212. Best interest of child.** (1) The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors, including but not limited to:

~~(1)~~(a) the wishes of the child's parent or parents as to his custody;

~~(2)~~(b) the wishes of the child as to his custodian;

~~(3)~~(c) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest;

~~(4)~~(d) the child's adjustment to his home, school, and community;

~~(5)~~(e) the mental and physical health of all individuals involved;

~~(6)~~(f) physical abuse or threat of physical abuse by one parent against the other parent or the child; and

~~(7)~~(g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent.

(2) A de facto custody arrangement, in the absence of a prior custody decree, does not require the child's parent or parents to prove the factors set forth in 40-4-219."

Section 2. Section 40-4-219, MCA, is amended to read:

"**40-4-219. Modification.** (1) The court may in its discretion modify a prior custody decree if it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child and if it further finds that:

(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of the petitioner with consent of the custodian;

(c) the child's present environment endangers seriously his physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to him;

(d) the child is 14 years of age or older and desires

INTRODUCED BILL
HB312

the modification;

(e) the custodian willfully and consistently:

(i) refuses to allow the child to have any contact with the noncustodial parent; or

(ii) attempts to frustrate or deny the noncustodial parent's exercise of visitation rights; or

(f) the custodial parent has changed or intends to change the child's residence to another state.

(2) A court may modify a de facto custody arrangement in accordance with the factors set forth in 40-4-212.

~~(2)~~(3) The court shall presume the custodian is not acting in the child's best interest if the custodian does any of the acts specified in subsection (1)(e).

~~(3)~~(4) The court may modify the prior decree based on subsection (1)(f) to provide a new visitation schedule and to apportion transportation costs between the parents.

~~(4)~~(5) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

~~(5)~~(6) A custody decree may be modified upon the death of the custodial parent pursuant to 40-4-221.

(7) As used in this section, "prior custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding."

-End-

Form CS-32
Rev. 1985

STATUS SHEET

51 LEGISLATIVE SESSION

JUDICIARY COMMITTEE

BILL NUMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CON-CURRED IN DATE	BE CON-CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
HB 201	1-17	1-27	1-27	1-27							
HB 248	1-18	2-1	2-1	2-1							
HB 260	1-18	1-26	1-26			1-26					
HB 264	1-18	2-1	2-6			2-6					
HB 265	1-18	1-27	1-30			1-30					
HB 286	1-19	1-31	1-31			1-31					
HB 291	1-19	2-2	2-17			2-17					
HB 292	1-19	2-2	2-2	2-2							
HB 295	1-20	2-1	2-9			2-9					
HB 310	1-20	2-13	2-13			2-13					
HB 312	1-20	1-31	1-31	1-31							
HB 313	1-20	2-6	2-9			2-9					
HB 316	1-23	2-8	TABLED	ON 2-9							
HB 330	1-23	2-9	TABLED	ON 2-9							

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Brown, on January 31, 1989, at 8:00 a.m.

ROLL CALL

Members Present: All

Members Excused: None.

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: None.

HEARING ON HOUSE BILL 168

Presentation and Opening Statement by Sponsor:

Rep. Thomas Lee, District 49, stated that this bill will reverse the current statute that, unless so ordered, if there are two or more sentences, they will be automatically merged and served concurrently. Unless the judge took specific action the sentences would be served consecutively. It principally addresses justice both for the offender and the victim and also for society. There is no rationale in most instances for an individual to be allowed to have two or more crimes for the price of one sentence and this bill addresses it.

Testifying Proponents and Who They Represent:

Michael Keedy, Kalispell District Judge

Proponent Testimony:

Mr. Keedy stated that the Legislature's statement of policy found in Sec. 46-18-401 says that the correctional policy is to protect society by preventing crime through punishment and rehabilitation of the convicted. The Legislature finds that an individual is responsible for and must be held accountable for his actions. Corrections laws and programs must be implemented to impress upon each individual his responsibility for obeying the law. To achieve this end it is the policy of the state to assure that prosecution of criminal offenses occurs whenever probable cause exists and

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Discussion: None.

Amendments, Discussion, and Votes: Rep. Mercer moved to amend as proposed by Rep. Lee but adopting only the first sentence. Strike everything after the word "sentence." This would say that a justice, city or municipal court does have the authority to restrict an individual's right to carry or use a dangerous weapon as a condition of a sentence. The advantage to that amendment is that it takes out the language of owning a gun and also does not adopt an unnecessary procedure for reviewing the sentence. Rep. Boharski seconded the amendments.

Rep. Brooke asked why "owning" was being struck from the lower courts authority. Rep. Mercer stated that he understood the proponents to say that owning the gun was not the concern but using the gun was a concern.

Rep. Eudaily asked if the current statute provides for a periodic review referred to in the second sentence. Rep. Mercer stated that he understood, and testimony was made to that effect, that you can petition any judge at any time to review any sentence.

The motion to amend per Rep. Mercer's request CARRIED with Reps. Brooke and Eudaily opposing.

Recommendation and Vote: Rep. Boharski moved that HB 286 DO PASS AS AMENDED. Rep. Knapp seconded. The motion CARRIED unanimously.

HEARING ON HOUSE BILL 312

Presentation and Opening Statement by Sponsor:

Rep. Mary Ellen Connelly, District 8, stated that this bill would clarify the law relating to modification of child custody, specifically, a prior custody decree. The judge would have some leeway in determining the custody and the best interests of the child. This is a result of a case in the Supreme Court. It allows the judge to look at who had the custody when the family separated before the divorce became final.

Testifying Proponents and Who They Represent:

Michael Keedy, Kalispell District Judge

Proponent Testimony:

Michael Keedy rose in support of this bill with some hesitation because there is a real potential for confusion and presented EXHIBIT 6 for clarification. The first part of the bill defines the best interests of the child which

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courts are supposed to look at in making custody decisions. Section 2 sets forth the criteria in determining whether to modify an existing decree. Ordinarily, a court will consider the questions of a child's best interests and determine custody. Once custody has been determined, the benefits of custody must outweigh the disadvantages of disruption in a child's life by virtue of a change of custody. The reason for the bill is to correct a mistake on the part of Montana Supreme Court which decided a divorce case which said that in any case where there is a de facto determination of custody (where the parents have gotten together and decided temporarily where the children should be), then that temporary custody is elevated to the status of a prior decree.

Testifying Opponents and Who They Represent:

Bill Riley, self

Opponent Testimony:

Mr. Riley stated that he is a divorced father and a licensed social worker. His understanding of this bill is that if de facto means that both divorcing parents agree on custody arrangement, then this bill is favorable. If de facto means that one parent can manipulate a temporary agreement out of the other parent, and then the temporary agreement does not come under the scrutiny of the best interest of the child, then he is opposed to the bill. He would like further clarification.

Questions From Committee Members: Rep. Brown asked Mr. Keedy to respond to Mr. Riley's concerns. Mr. Keedy responded that he understood the Supreme Court in this area, de facto means whatever the prevailing conditions are, whether they are the result of an agreement between the parties or otherwise.

Rep. Hannah told Mr. Keedy that last session there was considerable discussion over the presumption of joint custody and asked how this law relates to joint custody. Mr. Keedy responded that he did not think it did. Typically, a court will award joint custody unless there are prevailing conditions which indicate against it. As a practical matter, the court is then going to have to make a decision as to where the child will physically live and that is when this statute would kick in. Rep. Hannah asked for clarification that if the father moves out of the house and takes up residence somewhere else and the children and the mother residing in the home, would that become a de facto arrangement? Mr. Keedy responded that would be true and the case would move into the secondary level because of that arrangement.

Rep. Eudaily asked Mr. Keedy if the serious endangerment section is eliminated as proposed, would that still be a serious

consideration in determining the best interest of the child. Mr. Keedy responded that if the court is concerned that a child's physical welfare might be seriously endangered if he remained in the custody or awarded to the custody of his father, then the court, in applying the child's best interest, probably would not do it. Rep. Eudaily asked how that would be discovered. Mr. Keedy stated that the court would conduct a custody hearing with testimony from a variety of witnesses including the parents and possibly the children, would be taken and the court would make an informed determination as to what would serve the child's best interests. The bill only affects cases without a prior decree and does not affect cases with a decree seeking a modification.

Rep. Mercer added that this is a clarification of an existing statute. Any time custody is being determined prior to a final divorce decree, then the child's best interest would be looked at. After that decree has been entered, changes can be made by proving endangerment. This bill says that the de facto agreement prior to the final decree, then the court is not to treat that as a decree and still looks at the best interests of the child and does not treat it as a modification of a decree.

Closing by Sponsor: Rep. Connelly stated that in all cases of divorce in which a child is involved then the child's best interests should be first and foremost and the courts do not always do that.

DISPOSITION OF HOUSE BILL 312

Motion: Rep. Darko moved HB 312 DO PASS. Rep. Stickney seconded.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: The motion that HB 312 DO PASS CARRIED unanimously.

HEARING ON HOUSE BILL 454

Presentation and Opening Statement by Sponsor:

Rep. Mary Ellen Connelly, District 8, stated that this bill would prohibit a defendant who voluntarily entered a guilty plea in a lower court from appealing to a district court. Under present law a criminal defendant is free to plead guilty to an offense in a lower court and immediately appeal his conviction to the district court if he is dissatisfied with the sentence that he received in the lower court. When that happens then the district court is put through the time

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 31, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

CS-30

STANDING COMMITTEE REPORT

January 31, 1989

Mr. Speaker: We, the committee on Judiciary report that House Bill 312 (first reading copy -- white) do pass .

Signed: _____

Dave Brown, Chairman

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL 312 DATE JAN. 31, 1989

SPONSOR REP. CONNELLY

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
MICHAEL KEEDY	KALISPELL	X	
Thomas N. Lee	Bigfork	X	
Bill Raly (Riley)	Helena		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

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CS-33

CHAIRMAN--BRUCE CRIPPEN
SECRETARY-ROSEMARY JACOBY
NORMAL SCHEDULE==> SITE: ROOM 325

COMMITTEE--(S) JUDICIARY
DAYS: M,T,W,T,F TIME: 10:00 A.M.

OFFICE--ROOM 412

NOTE: BILL WILL BE LISTED TWICE IF REREFERRED BACK TO THE SAME COMMITTEE

BILL	REFER DATE	LATEST DATE/ACTION ON BILL	
		SPONSOR: ADDY, KELLY	TITLE-CLARIFY LAW CONCERNING ACCESS TO JUSTICE DEPARTMENT REPORTS ON CAR ACCIDENTS
HB 310	02/18	03/23--(H) CHAPTER NUMBER	EFFECTIVE DATE: 07/01/89
		SPONSOR: SCHYE, TED	TITLE-REVISE YOUTH COURT ACT PETITION FILING TIME AND HEARING PROVISIONS
HB 312	02/06	03/24--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: CONNELLY, MARY ELLEN	TITLE-AMENDING CUSTODY MODIFICATION STATUTE TO DEFINE PRIOR "CUSTODY DECREE"
HB 313	02/17	04/04--(H) CHAPTER NUMBER	EFFECTIVE DATE: 04/04/89
		SPONSOR: GRADY, ED	TITLE-REVISE SKIER RESPONSIBILITY LAW TO ADDRESS SUPREME COURT DECISION
HB 326	02/08	03/27--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: RICE, JIM	TITLE-EXEMPT PARALEGALS, LAW ASSISTANTS AND STUDENTS FROM PRIVATE INVESTIGATOR LAW
HB 349	02/15	04/11--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: STRIZICH, BILL	TITLE-DISPOSITION OF PROPERTY USED TO VIOLATE DRUG LAWS
HB 350	02/15	04/11--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: STRIZICH, BILL	TITLE-CONVICTED PERSON TO PAY COST OF SUPERVISING HIS PAYMENT OF RESTITUTION
HB 351	02/15	03/27--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: STRIZICH, BILL	TITLE-CRIMINAL OFFENSE TO POSSESS SAWED-OFF RIFLE OR SHOTGUN
HB 368	02/09	03/27--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: COCCHIARELLA, VICKI	TITLE-NEGLIGENT VEHICULAR ASSAULT--LICENSE REVOCATION AND 12 CONVICTION POINTS
HB 386	02/13	04/24--TABLED IN COMMITTEE	
		SPONSOR: KNAPP, ROGER	TITLE-DIVIDING TAXES ON PERSONAL PROPERTY SOLD IN BANKRUPTCY
HB 393	02/28	04/03--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: DARKO, PAULA	TITLE-UNLAWFUL POSSESSION--INCLUDE CONSUMPTION--COMMUNITY SERVICE
HB 401	02/15	04/21--(H) -	FILED WITH SECRETARY OF STATE
		SPONSOR: BROWN, DAVE	TITLE-PERMIT PROBATION AND PAROLE OFFICERS TO CARRY FIREARMS
HB 409	02/09	03/23--(H) CHAPTER NUMBER	EFFECTIVE DATE: 03/23/89
		SPONSOR: GOOD, SUSAN	TITLE-CLARIFY ATTORNEY CLIENT PRIVILEGE
HB 422	02/28	04/08--(H) CHAPTER NUMBER	EFFECTIVE DATE: 04/08/89
		SPONSOR: EUDAILY, RALPH	TITLE-AMEND LIVING WILL ACT AS TO PEOPLE WHO MAY WITHHOLD LIFESUSTAINING PROCEDURE
HB 425	02/18	04/08--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: VINCENT, JOHN	TITLE-GENERALLY STIFFEN DUI PENALTIES
HB 448	02/09	03/29--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: MENAHAN, RED	TITLE-AUTHORIZE POSSESSION OF 25-YEAR OLD SLOT MACHINES
HB 454	02/06	03/23--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: CONNELLY, MARY ELLEN	TITLE-PROHIBIT APPEAL OF GUILTY PLEA TO DISTRICT COURT
HB 459	02/15	03/14--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: BROWN, JAN	TITLE-ALLOW JURIES OF LESS THAN 12 IN FELONY ACTIONS IF PARTIES AGREE
HB 471	02/15	03/30--(H) CHAPTER NUMBER	EFFECTIVE DATE: 03/30/89
		SPONSOR: GLASER, WILLIAM	TITLE-WATER DISTRICT MAY GET PREDECESSOR WATER ASSN PROPERTY BY EMINENT DOMAIN

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on March 8, 1989, at 10:00 a.m. in Room 325.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al Bishop, Senators Tom Beck, Bob Brown, John Harp, Mike Halligan, Loren Jenkins, R. J. Pinsoneault and Bill Yellowtail

Members Excused: Senator Joe Mazurek

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee Secretary Rosemary Jacoby

Announcements/Discussion: None

HEARING ON HOUSE BILL 312

Presentation and Opening Statement by Sponsor:

Representative Mary Ellen Connelly of Kalispell, District 8, opened the hearing. She said the request for the bill came out of a group meeting with district judges and justices of the peace as a result of a supreme court case (Andre) on de facto custody. The bill lays out the criteria that must be met before a court can modify a prior custody decree, she said. It provides that, if the custody circumstances have changed and that the child's living arrangements are dangerous physically or mentally, the custody arrangements can be changed. If there is a divorce and the child had been living with a parent before the divorce decree, the bill asks that the court consider that in declaring custody. The bill also clarifies "prior custody" she said in the best interest of the child.

List of Testifying Proponents and What Group they Represent:

None

List of Testifying Opponents and What Group They Represent:

None

Testimony:

None

Questions From Committee Members: Senator Jenkins asked for information on the court case cited. Rep. Connelly said the court decided that they would not look at the child's living arrangements prior to the divorce and awarded custody to the other parent.

Senator Jenkins asked if that child had been living with the father and Rep. Connelly said she thought so.

Senator Halligan asked if de facto custody arrangements had been discussed in the House. He also asked if other factors had been discussed, such as current economic situations. Rep. Connelly said that she had talked with Rep. Spaeth who said that all arrangements i.e. education, church, would be looked at in his opinion. The Andre decision said that nothing that had gone on before could be considered.

Closing by Sponsor: Rep. Connelly closed saying she had spoken to many attorneys on the bill and they agreed that it would clarify custody and make their job easier.

HEARING ON HOUSE BILL 248

Presentation and Opening Statement by Sponsor:
Representative Mary McDonough of Billings, District 89, opened the hearing. She said the bill makes private retirement benefits exempt from bankruptcy proceedings. The bill was requested by an attorney in Havre who was head of the bankruptcy division of the State Bar Association. In the 1987 Montana Revised Bankruptcy Code, some of the federal exemptions were opted out. In December, a bankruptcy decision came down from Judge Peterson (Exhibit 1) which said that the MCA includes as exempt numerous public retirement pension and annuity funds; however, no private pensions such as Keoghs or IRAs are listed in statute. This bill would put private retirement on an equal basis with public retirement in the case of bankruptcy. She said that

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 3-8-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK			✓
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL			

Each day attach to minutes.

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on March 9, 1989, at 10:00 a.m.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al Bishop, Senators Tom Beck, Bob Brown, John Harp, Mike Halligan, Loren Jenkins, Joe Mazurek, R. J. Pinsoneault and Bill Yellowtail

Members Excused: None

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee Secretary Rosemary Jacoby

Announcements/Discussion: None

HEARING ON HOUSE BILL 204

Presentation and Opening Statement by Sponsor:
Representative John Cobb of Augusta, District 42, opened the hearing. He said the bill was to allow the placing of an SRS or county lien on, rather than subrogation interest in, a third-party recovery by a recipient whose medical expenses were paid by the department or county. He said that SRS and AFDC may be paying benefits for a party on welfare. If that person wins a lawsuit for a large amount of money, this bill will grant SRS authority to ask for some recovery by allowing a lien to be used to obtain the money. The hospitals and doctors already have this right and the SRS should also, he stated. The House amended the bill to provide that, unless the SRS pays the attorney fees, then the SRS is only entitled half of the recovery. This would make the SRS pay the attorneys fees which the hospitals and the doctors don't have to do, he added.

List of Proponents:
Russell Cater, Social and Rehabilitative Services

Amendments and Votes: None

Recommendation and Vote: Senator Jenkins MOVED that House Bill 135 BE TABLED. The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE SESSION

DISPOSITION OF HOUSE BILL 295:

Discussion: Senator Mazurek who had offered to carry the bill explained the amendments. He said there were two kinds of reports -- by drivers and by investigating officers. In Section 9, he told the committee, it provided that individuals do not have to make reports if the investigating officers do make them. The drafter saw the need for confidentiality and admissibility to be clarified for both the investigative and the personal reports.

Amendments and Votes: Senator Mazurek MOVED the Amendments. The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Mazurek MOVED that House Bill 295 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

Senator Mazurek asked if the committee report could be held giving him additional time to satisfy one concern he had with the bill. Chairman Crippen agreed to do that.

DISPOSITION OF HOUSE BILL 312:

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Halligan MOVED that House Bill 312 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

DISPOSITION OF HOUSE BILL 386:

Discussion: Senator Bishop commented that he had received a letter from a Mr. Mateucci who had good reason for opposing the bill.

SENATE STANDING COMMITTEE REPORT

March 9, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 312 (third reading copy -- blue), respectfully report that HB 312 be concurred in.

Sponsor: Connelly (Brown)

BE CONCURRED IN

Signed: _____

Bruce D. Crippen, Chairman

3/9/89
3 p.m.

scrbb312

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ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 3-9-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

HOUSE BILL NO. 312

INTRODUCED BY CONNELLY, LEE, B. BROWN, BROOKE, COHEN

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE LAW RELATING TO MODIFICATION OF CHILD CUSTODY DECREES BY DEFINING "PRIOR CUSTODY DECREE" TO MEAN A JUDICIAL DETERMINATION OF CUSTODY; AND AMENDING SECTIONS 40-4-212 AND 40-4-219, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-4-212, MCA, is amended to read:

"**40-4-212. Best interest of child.** (1) The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors, including but not limited to:

~~(1)~~(a) the wishes of the child's parent or parents as to his custody;

~~(2)~~(b) the wishes of the child as to his custodian;

~~(3)~~(c) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest;

~~(4)~~(d) the child's adjustment to his home, school, and community;

~~(5)~~(e) the mental and physical health of all individuals involved;

~~(6)~~(f) physical abuse or threat of physical abuse by one parent against the other parent or the child; and

~~(7)~~(g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent.

(2) A de facto custody arrangement, in the absence of a prior custody decree, does not require the child's parent or parents to prove the factors set forth in 40-4-219."

Section 2. Section 40-4-219, MCA, is amended to read:

"**40-4-219. Modification.** (1) The court may in its discretion modify a prior custody decree if it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child and if it further finds that:

(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of the petitioner with consent of the custodian;

(c) the child's present environment endangers seriously his physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to him;

(d) the child is 14 years of age or older and desires

the modification;

(e) the custodian willfully and consistently:

(i) refuses to allow the child to have any contact with the noncustodial parent; or

(ii) attempts to frustrate or deny the noncustodial parent's exercise of visitation rights; or

(f) the custodial parent has changed or intends to change the child's residence to another state.

(2) A court may modify a de facto custody arrangement in accordance with the factors set forth in 40-4-212.

~~(2)~~(3) The court shall presume the custodian is not acting in the child's best interest if the custodian does any of the acts specified in subsection (1)(e).

~~(3)~~(4) The court may modify the prior decree based on subsection (1)(f) to provide a new visitation schedule and to apportion transportation costs between the parents.

~~(4)~~(5) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

~~(5)~~(6) A custody decree may be modified upon the death of the custodial parent pursuant to 40-4-221.

(7) As used in this section, "prior custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding."

-End-